

REMARKS UNDER 37 CFR § 1.111

Formal Matters

Claims Rejected Under 35 U.S.C. Section 102(b) (Treu)

In the Official Action of December 9, 2008, claims 13, 21 and 23-26 were rejected under 35 U.S.C. Section 102(b) as being anticipated by Treu, U.S. Patent No. 5,630,935. The Examiner asserted, *inter alia*, that Treu discloses an apparatus having an inelastic housing 135 enclosing a plunger (the plunger of syringe 135), an aperture 150 in the housing for conveying pressure from the housing during a medical procedure, and a pressure-operated valve coupled between the inner volume of the housing and a space outside of the inner volume of the housing for allowing pressure to escape from the inner volume of the housing through the valve when pressure in the housing exceeds a threshold.

Applicants respectfully traverse. The syringe 135 of Treu does not apply fluid pressure to the pressure relief valve 78. To the contrary, Treu discloses at column 10, lines 15-33, that the insert 148 transmits [physical] forces from the tip of the syringe 135 inserted into the sample removal port 138. This causes the diaphragm 140 to lift above the rim 139 of the cylindrical member 146, thereby allowing fluid to escape over the rim 139 down into the sample removal port 138 where it can be collected by the syringe 135. Accordingly, fluid pressure is not applied by the syringe to the valve 78. Rather, the valve 78 is mechanically actuated so that fluid can be delivered into the syringe 135. Claims 13 and 21 have been amended to clarify that whereby fluid pressure in the inner housing actuates the valve by exerting fluid pressure thereon.

With regard to the Examiner's suggestions to recite discrete thresholds, Applicants have amended claims 13 and 21 above to do so. Applicants have also positively recited the property of the valve as suggested.

In view of the above amendments and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 13, 21 and 23-26 under 35 U.S.C. Section 102(b) as being anticipated by Treu, U.S. Patent No. 5,630,935, as being inappropriate.

Claims Rejected Under 35 U.S.C. Section 103(a) (Jackson in view Treu)

Claims 13, 15-16, 21 and 23-26 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Jackson, U.S. Patent No. 4,623,335 in view of Treu, U.S. Patent No. 5,630,935. The Examiner admitted that Jackson does not disclose a pressure operated valve adapted to allow selection of the threshold, during use, for a plurality of different thresholds, but asserted that it would have been obvious to modify the spring system of Jackson with the spring system taught by Treu to adapt it to allow selection of the threshold.

Even if the combination suggested by the Examiner would have been obvious to make, which Applicants do not agree that the combination would have been obvious, the result would still not meet all of the recitations of the present claims, as amended above. As noted above, the pressure relief valve 78 is not operated by fluid pressure from the interior of the syringe 135. Nor does the relief valve 78 include features for user selection of a discrete threshold pressure from a plurality of different, discrete threshold pressures.

In view of the above amendments and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 13, 15-16, 21 and 23-26 under 35 U.S.C. Section 103(a) as being unpatentable over Jackson, U.S. Patent No. 4,623,335 in view of Treu, U.S. Patent No. 5,630,935, as being inappropriate.

Conclusion

Applicants submit that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone the undersigned at the number provided.

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The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-2653, order number G UID-134.

Respectfully submitted,

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